

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

TO: Members of the Subcommittee on Contracting and Infrastructure

FROM: Committee Majority Staff

DATE: May 5, 2023

RE: Subcommittee on Contracting and Infrastructure Hearing Titled: “Leveling the Playing Field: The State of Small Business Contracting”

On **May 11, 2023, at 2:00 P.M. (EST)**, the Subcommittee on Contracting and Infrastructure will hold a hearing titled, **“Leveling the Playing Field: The State of Small Business Contracting.”** The meeting will convene in room 2360 of the Rayburn House Office Building. The purpose of this hearing is to examine the role small business plays in federal procurement and ensure that the government is fully utilizing these vital partners.

I. Witnesses

- Mr. Rob Schroder, Founder and Managing Partner, SteerBridge
- Ms. Jackie Ferrari, Founder and CEO, American Fashion Network
- Ms. Jacqueline K. Lopez, President, Premier Enterprise Solutions

II. Background

The U.S. Government is the largest customer in the world, spending nearly \$700 billion on federal contracts in FY2022.¹ Small businesses received \$159 billion (over 20 percent) of those contracting dollars, but the total number of small firms receiving those contracts has declined in recent years.² Small businesses have unique contracting opportunities because of the important role they play in America’s industrial base. There are statutorily defined government wide goals that encourage, and often require, agencies to use small businesses for their contracting needs.³ These goals are tracked by the Small Business Administration (SBA) and reported publicly through its annual Scorecard.⁴

¹ BLOOMBERG GOV’T, FISCAL YEAR 2023 GOV’T CONTRACTING PLAYBOOK, 3 (2023).

² Justin Siken, *Small Businesses Awarded Record \$159 Billion from Federal Government in 2022*, HIGHER GOV. (Feb. 13, 2023).

³ 15 U.S.C. § 644 (g).

⁴ 15 U.S.C. § 644 (y).

Through the SBA contracting programs, small businesses have opportunities to compete for “set-aside” contracts and other sole-source procurements. The set-aside programs include the Women-Owned Small Business Federal Contracting Program (WOSB), HUBZone (Historically Underutilized Business Zones), Service-Disabled Veteran-Owned Small Business (SDVOSB), and the 8(a) Business Development Program.

Government agencies are congressionally mandated to spend a portion of contracting dollars with small businesses.⁵ Each contracting agency has an Office of Small and Disadvantaged Business Utilization (Department of Defense (DoD) equivalent is the Office of Small Business Programs), which works with the SBA to ensure that small businesses have adequate opportunities.⁶ Yet even with these unique opportunities, the government has decreased the number of small businesses it has contracted with by roughly 40 percent over the last decade.⁷

Declining small business contracting industry

The number of small businesses participating in federal contracting has been declining for decades and data suggests that it is only getting worse.⁸ Not only are fewer small businesses winning contracts, but fewer small businesses are engaging in the federal procurement process. The problem is so severe that the number of new small businesses entering the procurement marketplace declined by 79 percent from 2005 to 2019.⁹ The number of small businesses winning prime contracts in 2022 is half of what it was in 2010.¹⁰ The concern is so great that the DoD (the largest federal procuring agency) stated that the declining small business participation in federal contracting will weaken the military.¹¹

Goaling & Data Accuracy

The SBA reports on the government’s progress towards its small business procurement goals using its annual Scorecard.¹² These goals are designed to keep track of the federal government’s procurement dollars contracting with small businesses. The specific goals are:

- 23 percent of the total value of all prime contract awards to small business concerns;
- 3 percent of all prime contract dollars to SDVOSBs;
- 3 percent to qualified HUBZone small business concerns;
- 5 percent to small business concerns owned and controlled by Small, Disadvantaged Businesses (SDBs), which includes 8(a) firms; and
- 5 percent to small business concerns owned and controlled by women WOSBs.

⁵ 15 U.S.C. § 644 (g).

⁶ 15 U.S.C. § 644 (k).

⁷ Melissa Angell, *Fewer Small Businesses Are Lining Up for Federal Contracts. Those That Did Booked a Record \$154 Billion in 2021*, INC.COM (Jul. 27, 2022).

⁸ Justin Siken, *Small Businesses Awarded Record \$159 Billion from Federal Government in 2022*, HIGHER GOV. (Feb. 13, 2023).

⁹ Dane Stangler, *Supporting Small Business and Strengthening the Economy Through Procurement Reform*, BIPARTISAN POLICY CTR. (Jun. 22, 2021).

¹⁰ *Id.*

¹¹ U.S. DEP’T OF DEFENSE, SMALL BUS. STRATEGY, 4 (Jan. 2023).

¹² 15 U.S.C. § 644 (y).

There are concerns with the accuracy of the procurement data in the SBA's Scorecard.¹³ Unfortunately, the SBA can double count awards, artificially inflating these numbers. Also, the Scorecard grading scale is potentially skewed in a way where an agency can receive the grade of an "A" while failing to meet most of the prime contracting goals.¹⁴ In fact, inaccurate procurement data and eligibility concerns are such a problem that SBA's Inspector General found that they undermined reliability of contract goal achievements.¹⁵ Until this is resolved it is nearly impossible to get a true sense of the state of small business contracting with the federal government.

Fraud & Eligibility Concerns

Fraud and eligibility concerns are also an ongoing issue in the SBA's small business contracting programs.¹⁶ Self-reporting and self-certification by businesses have resulted in inaccurate categorization and improper payments, further undermining the reliability of SBA's contracting goal achievements.¹⁷

The Government Accountability Office (GAO) reported up to 40 percent of WOSBs sampled by the SBA were ineligible to be in the WOSB program.¹⁸ While steps have been taken to reduce self-certification in the SBA's contracting programs, self-certified firms are still counted by agencies in their congressional mandated procurement goals.¹⁹

For example, the SDB firms can self-certify their status. This has led to more than 149,000 firms self-certifying as a small disadvantaged businesses, receiving as much as \$12.4 billion in prime contract awards.²⁰ The SBA removed the ability to protest an owner's SDB status in 2020.²¹ Concerns over eligibility of self-certified firms is so great that SBA IG reported that "firms falsely certifying that they are socially and economically disadvantaged may win federal contracts that count towards the agency's contracting goals."²² This issue is not present in programs like 8(a) Business Development Program, which have more rigorous certification requirements, designed to allow only socially and economically disadvantaged businesses in.

Previously, in the SDVOSB program, firms could self-certify their SVOSB status for prime and subcontract opportunities. Due to concerns of fraud, Congress passed the National Defense Authorization Act of Fiscal Year 2021 requiring the SBA to implement and administer a full certification program for SDVOSBs applicable to prime contracts.²³ Despite the SBA

¹³ SMALL BUS. ADMIN, SMALL BUSINESS PROCUREMENT SCORECARD EVALUATION REPORT, 44 (Apr. 2021).

¹⁴ Michelle Kumar, *No More Easy A's: Strengthening the Procurement Scorecard*, No More Easy A's, BIPARTISAN POLICY CTR. (Nov. 17, 2022).

¹⁵ SMALL BUS. ADMIN., OFFICE OF INSPECTOR GEN., REPORT 23-01, TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SMALL BUSINESS ADMINISTRATION IN FISCAL YEAR 2023, 12 (Oct 14, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ GOV'T ACCOUNTABILITY OFFICE, 19-168, WOMEN-OWNED SMALL BUSINESS PROGRAM, 20 (Mar. 2019).

¹⁹ U.S. SMALL BUS. ADMIN. OFFICE OF INSPECTOR GEN., REPORT 23-01, TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SMALL BUSINESS ADMINISTRATION IN FISCAL YEAR 2023, 13 (Oct 14, 2022).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ William M. (Mac) Thornberry National Defense Act for Fiscal Year 2021, Pub. L. No. 116-283, § 862 (2020).

implementing this change in January 2023, concerns remain that agencies continue to award general small business set-aside contracts or full and open contracts to self-certified SDVOSBs.²⁴

III. Conclusion

Small business contractors play a vital role in America's industrial base. This hearing will serve as guidance to the Committee's efforts in ensuring small businesses are represented and that the government accurately portrays the true state of small business in federal contracting.

²⁴ Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business-Certification, 87 Fed. Reg. 73400 (2022)